

In the Specialists Section, providers are listed alphabetically by specialty within each geographical area.

The final sections include Participating Hospitals, Psychiatric Hospitals, Laboratory Services, Radiology Services and Medical Aid Services.

While Mid-Atlantic Health Plan's goal is to provide current information, our provider network is subject to change without notice. For current information on the status of a particular practice, please contact Member/Provider Services at (302) 327-7600 or toll free at (800) 362-4214, or call the doctor's office directly.

[Back to Top ↑](#)

[Primary Care Physicians - New Castle County, DE - Family Practice](#)

[Primary Care Physicians - New Castle County, DE - Internal Medicine](#)

[Primary Care Physicians - New Castle County, DE - Pediatrics](#)

[Primary Care Physicians - Kent & Sussex Counties, DE - Family Practice](#)

[Primary Care Physicians - Kent & Sussex Counties, DE - Internal Medicine](#)

[Primary Care Physicians - Kent & Sussex Counties, DE - Pediatrics](#)

[Primary Care Physicians - Cecil County, MD - Family Practice](#)

[Primary Care Physicians - Cecil County, MD - Internal Medicine](#)

[Primary Care Physicians - Cecil County, MD - Pediatrics](#)

[Primary Care Physicians - Eastern Shore, MD - Family Practice](#)

[Primary Care Physicians - New Jersey - Family Practice](#)

[Primary Care Physicians - New Jersey - Internal Medicine](#)

[Primary Care Physicians - New Jersey - Pediatrics](#)

[Primary Care Physicians - Pennsylvania - Family Practice](#)

[Primary Care Physicians - Pennsylvania - Internal Medicine](#)

Primary Care Physicians - Pennsylvania - Pediatrics

Obstetricians/Gynecologists - New Castle County, DE

Obstetricians/Gynecologists - Kent & Sussex Counties, DE

Obstetricians/Gynecologists - Cecil County, MD

Obstetricians/Gynecologists - New Jersey

Obstetricians/Gynecologists - Pennsylvania

Specialists - New Castle County, DE

Specialists - Kent & Sussex Counties, DE

Specialists - Cecil County, MD

Specialists - Eastern Shore, MD

Specialists - New Jersey

Specialists - Pennsylvania

Behavioral Health - New Castle County, DE

Behavioral Health - Kent & Sussex Counties, DE

Behavioral Health - Cecil County, MD

Behavioral Health - Eastern Shore, MD

Behavioral Health - Pennsylvania

Participating Hospitals

Psychiatric Hospitals

Laboratory Services

Radiology Services

Medical Aid Services

[Back to Top ↑](#)

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PRIMARY CARE PHYSICIANS

PENNSYLVANIA

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Downingtown, PA 19335
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Oxford, PA 19363
(610) 932-8141

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(610) 560-8500

Robert Denitzio, M.D.*Family Medicine Specialists, P.C.***PCP ID: A72234**

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West Grove, PA 19390

(610) 869-9220

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Paoli, PA 19301

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(610) 649-5033

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 10000 Shannondell Drive
 Audubon, PA 19403
 (610) 728-5241

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INTERNAL MEDICINE

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Great Valley Health

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Broomall, PA 19008

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130 S. Bryn Mawr Avenue

Suite 120

Bryn Mawr, PA 19010

(610) 526-3400

John Barlow, M.D.

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Linda M. Bullock, D.O.

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PCP ID: C28710

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Great Valley Medical Associates, P.C.

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Jay S. Cooperman, M.D.

PCP ID: G34197

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Paoli, PA 19301

(610) 644-0477

Donald J. Corey, M.D.

Great Valley Health

PCP ID: C32170

Age 18 - geriatrics

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Jeffrey B. Ellis, M.D.

Great Valley Health

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Ronald S. Fuchs, M.D.

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Presidential Commons, D-103

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Audubon, PA 19403

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Ages 12 and older

3004-06 Butler Pike

Conshohocken, PA 19428

(610) 834-0290

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Great Valley Health
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Paoli, PA 19301
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130 South Bryn Mawr Avenue
312 D Wing
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Ardmore, PA 19003
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PRIMARY CARE PHYSICIANS

PENNSYLVANIA

PEDIATRICS

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Dino J. Baca, D.O.

duPont Pediatrics

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Jeffrey P. Bomze, M.D.

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Jennifer S. Brod, M.D.

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(610) 647-5022

Chhaya S. Chaudhary, M.D.

Sunshine Pediatrics, LLC

PCP ID: E61956

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Conshocken, PA 19428

(610) 825-1994

Abha Dewan, M.D.

PCP ID: 20078

Newborn to 19 years

450 Lankenau MOB East

100 Lancaster Avenue

Wynnewood, PA 19096

(610) 896-8009

1300 Lawrence Road

Havertown, PA 19083

(610) 853-3737

Paoli Commons, No. 325

250 W. Lancaster Avenue

Paoli, PA 19301

(610) 725-1775

Suzu L. Dowell, M.D.

Great Valley Health

PCP ID: 6814

599 Arcola Road

Collegeville, PA 19426

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Hilary V. Field, M.D.

Wayne Pediatric Associates

PCP ID: G60016

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Wayne, PA 19087

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Pediatric Associates of Paoli, P.C.

PCP ID: 7963

Newborn - 18 years

17 Industrial Boulevard, Suite 204

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(610) 647-1484

Gerald L. Gary, M.D.

PCP ID: 6487

833 Chestnut St., 3rd Floor

Philadelphia, PA 19107

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Elaine Gonzales, M.D.

Kids First - Kennett Square

PCP ID: G40586

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(610) 444-0113

Harold M. Gordon, M.D.

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PCP ID: E77422

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Bryn Mawr, PA 19010

(610) 527-4715

418 E. Lancaster Avenue

Wayne, PA 19087

(610) 527-4715

Roland F. Gutierrez, M.D.

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Michael J. Harkness, M.D.

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Bryn Mawr, PA 19010

(610) 527-4715

418 E. Lancaster Avenue

Wayne, PA 19087

(610) 527-4715

Henry Karcsh, D.O.*

Kids First - Kennett Square

PCP ID: B35128

891 E. Baltimore Pike

Kennett Square, PA 19348

(610) 444-0113

Venita Kaul, M.D.

Kids First-West Grove

PCP ID: G22690

Newborn to 18 years

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Kennett Square, PA 19348

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West Grove, PA 19390

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Jacalyn S. Maller, M.D.*Gordon-Klinow Pediatrics Associates***PCP ID: E03169***Newborn - 17 years*

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Bryn Mawr, PA 19010

(610) 527-4715

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Wayne, PA 19087

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Elana O. Miles-McDonald, M.D.**PCP ID: 50083***Ages 9 to 19 years*

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100 Lancaster Avenue

Wynnewood, PA 19096

(610) 896-8009

1300 Lawrence Road

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Li C. Tsai, M.D.*Great Valley Health**Newborn - 18 years***PCP ID: F87940**

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Madeleine C. Weiser, M.D.**PCP ID: D98846***Newborn - 21 years*

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OBSTETRICIANS / GYNECOLOGISTS

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Kevin Casey, M.D.
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Paoli, PA 19301
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West Chester, PA 19382
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Ardmore, PA 19003
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GASTROENTEROLOGY

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Philadelphia, PA 19107
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Suburban Gastroenterology
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A84

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ONCOLOGY

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Renaissance Medical Alliance
 250 W. Lancaster Avenue, Suite 310
 Paoli, PA 19301
 (610) 644-6040

Joseph V. Vernace, M.D.
**Main Line Orthopaedics &
 Reconstructive Surgery, P.C.**
Renaissance Medical Alliance
 101 South Bryn Mawr Avenue
 Suite 200
 Bryn Mawr, PA 19010
 (610) 527-9500

Marwan A. Wehbe, M.D.
Pennsylvania Hand Center, Ltd.
Renaissance Medical Alliance
 101 South Bryn Mawr Avenue
 Media, PA 19063
 (610) 525-1000

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A86

Pennsylvania

Specialists

OTOLARYNGOLOGY

Andrew V. Chuma, M.D.
Chester Co. Ear, Nose, & Throat Group
 9 North Five Points Road
 West Chester, PA 19380
 (610) 696-8800

201 Reeceville Road
 Coatesville, PA 19320
 (610) 384-8300

Lawrence I. Katin, M.D.
Renaissance Medical Alliance
 255 W. Lancaster Avenue, Suite 224
 Paoli Medical Building 2
 Paoli, PA 19301
 (610) 647-6070

Alexander C. Keszeli, D.O.
ENT Associates of Chester County
Renaissance Medical Alliance
 80 W. Welsh Pool Road
 Exton, PA 19341
 (610) 363-2532

404 McFarlan Road
 Kennett Square, PA 19348
 (510) 444-3995

Alfred J. Mauriello, M.D.
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Renaissance Medical Alliance
 80 W. Welsh Pool Road
 Exton, PA 19341
 (610) 363-2532

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 Kennett Square, PA 19348
 (510) 444-3995

Robert C. O'Reilly, M.D.
 130 S. Bryn Mawr Ave.
 Bryn Mawr, PA 19010
 (610) 526-4661

Jonathan Pontell, M.D.
Atlantic Skin & Cosmetic Surgery Group, PC
 255 W. Lancaster Avenue, Suite 106
 Paoli, PA 19301
 (610) 296-8844

Roy B. Stoller, D.O.
Chester Co. Ear, Nose & Throat Group
 602 E. Marshall St., Suite 11
 West Chester, PA 19380
 (610) 696-8800

Michael J. Ward, M.D.
Chester County Otolaryngology & Facial Plastic Surgery, P.C.
 133 E. Locust Street
 Oxford, PA 19363-1379
 (610) 998-9430

689 Unionville Road
 Kennett Square, PA 19348
 (610) 925-5551

PEDIATRIC SURGERY

Michael B. Marchildon, M.D.
Ages under 17 years
 833 Chestnut St., 3rd Floor
 Philadelphia, PA 19107
 (302) 215-955-5800

PODIATRY

David L. Berman, D.P.M.
Renaissance Medical Alliance
 4000 Edgemont Avenue
 Brookhaven, PA 19015
 (610) 874-2422

Philip E. Bernstein, D.P.M.
Renaissance Medical Alliance
 308 North Wayne Avenue
 Radnor, PA 19087
 (610) 688-1682

Richard Conti, D.P.M.
Foot and Ankle Associates
 685 Unionville Road
 Kennett Square, PA 19348
 (610) 444-6520

Paul D. Cryan, D.P.M.
Renaissance Medical Alliance
 295 Old Eagle School Road
 Wayne, PA 19087
 (610) 688-2304

David Guggenheim, D.P.M.
Foot and Ankle Associates
 685 Unionville Road
 Kennett Square, PA 19348
 (610) 444-6520

Albert Iannucci, D.P.M.
Foot and Ankle Associates
 685 Unionville Road
 Kennett Square, PA 19348
 (610) 444-6520

Steven Kattler, D.P.M.
Foot and Ankle Associates
 685 Unionville Road
 Kennett Square, PA 19348
 (610) 444-6520

Erin E. McGovern, D.P.M.
Foot & Ankle Associates, L.L.P.
 685 Unionville Road
 Kennett Square, PA 19348
 (610) 444-6520

Rt. 322 & Cherry Tree Road
 Stoney Pond Plaza
 Aston, PA 19014
 (610) 494-5570

Marvin A. Preske, D.P.M.
 450 Cherry Tree Road
 Aston, PA 19014
 (610) 485-8208

Kathryn Sydnor, D.P.M.
Foot and Ankle Associates
 685 Unionville Road
 Kennett Square, PA 19348
 (610) 444-6520

PULMONARY MEDICINE

Anthony Vasile, D.O.
Ages 12 and older
 9th & Wilson Streets, Suite 101
 Chester, PA 19013
 (610) 485-6180

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Specialists

Pennsylvania

RHEUMATOLOGY

Ronald E. Krauser, M.D.
Renaissance Medical Alliance
 255 W. Lancaster Avenue, Suite 222
 Paoli, PA 19301
 (610) 647-2398

Michael S. Rosen, M.D.
Renaissance Medical Alliance
 600 E. Marshsall Street, Suite 104
 West Chester, PA 19380
 (610) 692-4666

Thomas J. Whalen, M.D.
Renaissance Medical Alliance
 945 Haverford Road
 Bryn Mawr, PA 19010
 (610) 527-4409

THORACIC SURGERY

Karl M. Ahlswede, M.D.
Main Line Cardiothoracic Surgeon, PC
Adults Only
 100 Lancaster Avenue
 Suite 280, Med. Science Bldg.
 Wynnewood, PA 19096
 (610) 896-9255

Kevin Casey, M.D.
Main Line Cardiothoracic Surgeon, PC
Ages 18 and older
 100 Lancaster Avenue
 Suite 280, Med. Science Bldg.
 Wynnewood, PA 19096
 (610) 896-9255

Francis D. Ferdinand, M.D.
Main Line Cardiothoracic Surgeons, PC
Ages 18 and older
 100 Lancaster Avenue
 Suite 280, Med. Science Bldg.
 Wynnewood, PA 19096
 (610) 896-9255

Scott M. Goldman, M.D.
Main Line Cardiothoracic Surgeon, PC
Adults Only
 100 Lancaster Avenue
 Suite 280, Med. Science Bldg.
 Wynnewood, PA 19096
 (610) 896-9255

Francis P. Sutter, D.O.
Main Line Cardiothoracic Surgeons, PC
Ages 18 and older
 100 Lancaster Avenue
 Suite 280, Med. Science Bldg.
 Wynnewood, PA 19096
 (610) 896-9255

UROLOGY

Donald H. Andersen, M.D.
Collins & Andersen
Urological Associates
Renaissance Medical Alliance
 213 Reeceville Road
 Coatesville, PA 19320
 (610) 383-7663

606 E. Marshall Street
 West Chester, PA 19380
 (610) 692-4270

Leigh S. Bergmann, M.D.
Bryn Mawr Urology
Renaissance Medical Alliance
 101 Bryn Mawr Avenue, Suite 220
 Bryn Mawr, PA 19010
 (610) 525-6580

830 Old Lancaster Road, Suite 309
 Bryn Mawr, PA 19010
 (610) 527-5860

Guy T. Bernstein, M.D.
Renaissance Medical Alliance
 245 Bryn Mawr Avenue
 Bryn Mawr, PA 19010
 (610) 525-2515

James R. Bollinger, M.D.
Renaissance Medical Alliance
 21 Industrial Blvd., Suite 101
 Paoli, PA 19301
 (610) 296-0810

Anthony J. Cerone, D.O.
 606 E. Marshall St., Suite 207
 West Chester, PA 19380
 (610) 696-5227

250 W. Lancaster Avenue, Suite 300
 Paoli, PA 19301
 (610) 296-8240

1011 W. Baltimore Pike, Suite 312
 West Grove, PA 19390

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 West Chester, PA 19380
 (610) 692-4270

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Renaissance Medical Alliance
 101 Bryn Mawr Avenue, Suite 220
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 West Chester, PA 19380
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1011 W. Baltimore Pike, Suite 204
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 101 S. Bryn Mawr Avenue
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 Bryn Mawr, PA 19010
 (610) 525-6580

James F. Squadrito, Jr., M.D.
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 101 S. Bryn Mawr Avenue
 Suite 220
 Bryn Mawr, PA 19010
 (610) 525-6580

Pennsylvania

James W. Thompson, M.D.
Renaissance Medical Alliance
245 Bryn Mawr Avenue
Bryn Mawr, PA 19010
(610) 525-2515

VASCULAR SURGERY

Francis P. Sutter, D.O.
Main Line Cardiothoracic Surgeons, PC
Ages 18 and older
100 Lancaster Avenue
Suite 280, Med. Science Bldg.
Wynnewood, PA 19096
(610) 896-9255

Specialists

*Current Patients Only

BEHAVIORAL HEALTH PROVIDERS

PENNSYLVANIA

PSYCHOLOGY

Deborah L. Chauncey, Ph.D.
Ages 6 and higher
Rt. 1 & 100 Baltimore Pike
Chadds Ford, PA 19378
(610) 388-2809

Glen D. Greenberg, Ph.D.
Ages 5 and older
1410 Upland Street
Upland, PA 19013
(610) 872-4088

Richard I. Jontry, Ph.D.
Ages 12 and older
7 Hilloch Lane
Chadds Ford, PA 19317
(610) 361-0101

Jane E. Kassel, Psy.D.
16 W. Front Street
Media, PA 19063
(610) 566-2315

Mary B. Lehwica, Ph.D.
208 Skycrest Drive
Landenberg, PA 19350
(610) 274-0641

Samuel Romirowsky, Ph.D.
201 N. Jackson Street
Media, PA 19063
(610) 558-2777

Julie C. Young, Psy.D.
Ages 12 and older
201 Wilmington W. Chester Pike
Suite 2700
Glen Mills, PA 19342
(610) 361-1033

SOCIAL WORKERS (LICENSED CLINICAL)

Margaret R. Dorgan, LCSW
Ages 10 and older
610 Chadds Ford Drive, S-2
Chadds Ford, PA 19317
(610) 347-1797

Carolyn Livoy, LCSW
Ages 12 and older
2183 Baltimore Pike
Oxford, PA 19363
(610) 932-3004

Lynn M. McAllister, LCSW
Ages 9 and older
2183 Baltimore Pike
Oxford, PA 19363
(610) 932-3005

Carol Merrick, LCSW
Ages 6 and older
117 South Broad St.
Kennett Square, PA 19348
(610) 925-0404

Barbara A. Pope, LCSW
Ages 15 and older
260 Kennett Pike
Chadds Ford, PA 19317
(610) 388-6613

Carol Sherman, Ph.D.
280 North Providence Rd.
Media, PA 19063
(610) 892-2916

Joan C. Tremain, LCSW
Ages 18 and older
610 Chadds Ford Drive
Chadds Ford, PA 19317
(610) 388-3264

PARTICIPATING HOSPITALS

Please note: all outpatient tests, studies, and therapies performed at one of the hospitals listed below are considered "in network."

**Bayhealth Medical Center
Kent General Hospital**
640 South State Street
Dover, DE 19901
(302) 674-4700

Milford Memorial Hospital
21 W. Clarke Avenue
Milford, DE 19963
(302) 422-3311

Beebe Medical Center
424 Savannah Road
Lewes, DE 19958
(302) 645-3300

Bryn Mawr Hospital
130 South Bryn Mawr Avenue
Bryn Mawr, PA 19010
(610) 526-3000

**Christiana Care
Christiana Hospital**
4755 Ogletown-Stanton Road
Newark, DE 19718
(302) 733-1000

Wilmington Hospital
501 West 14th Street
Wilmington, DE 19801
(302) 733-1000

duPont Hospital for Children
1600 Rockland Road
Wilmington, DE 19803
(302) 651-4000

Jennersville Regional Hospital
1015 West Baltimore Pike
West Grove, PA 19390
(610) 869-1000

Lankenau Hospital
100 Lancaster Avenue
Wynnewood, PA 19096
(610) 645-2000

Memorial Hospital of Salem County
310 Woodstown Road
Salem, NJ 08079
(856) 935-1000

Nanticoke Memorial Hospital
801 Middleford Road
Seaford, DE 19973
(302) 629-6611

Paoli Memorial Hospital
255 West Lancaster Avenue
Paoli, PA 19301
(610) 648-1000

Peninsula Regional Medical Center
100 E. Carroll St.
Salisbury, MD 21801
(410) 546-6400

St. Francis Hospital
7th & Clayton Streets
Wilmington, DE 19805
(302) 421-4222

**Thomas Jefferson
University Hospital**
11th & Walnut Streets
Philadelphia, PA 19107
(215) 955-6000

Union Hospital
106 Bow Street
Elkton, MD 21921
(410) 398-4000

WHITE AND WILLIAMS LLP

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1800 One Liberty Place
Philadelphia, PA 19103-7395
215.864.7000/7150

Attorneys for Defendants,
Lydia Adair McFadden and
Christiana Care Health Services,
Inc. (Incorrectly identified as
Christiana Hospital)

KIMBRA CRISWELL

Plaintiff,

v.

LYDIA ADAIR McFADDEN

and

CHRISTIANA HOSPITAL

Defendants.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

MAY TERM, 2004

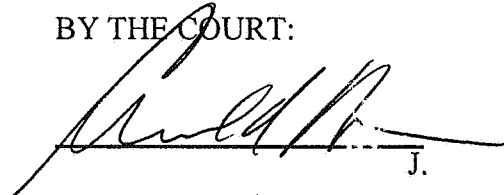
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061091

ORDER

AND NOW, this 13th day of October, 2004, upon consideration of Defendants Lydia Adair McFadden and Christiana Care Health Services, Inc. (Incorrectly identified as Christiana Hospital)'s Preliminary Objections to Improper Jurisdiction and Venue, and any response thereto, it is hereby **ORDERED** and **DECREED** that said Preliminary Objections are **GRANTED**, and that this matter is **DISMISSED WITH PREJUDICE**.

BY THE COURT:



J.

COPIES SENT
PURSUANT TO Pa. R.C.P. 236(b)

OCT 13 2004

First Judicial District of Pa.
User I.D.:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KIMBRA CRISWELL

Plaintiff,

v.

LYDIA ADAIR MCFADDEN

and

CHRISTIANA CARE HEALTH
SERVICES, INC.,

Defendants.

C.A. No:

Jury Trial Demanded

COMPLAINT

This is a personal injury action brought by Kimbra Criswell against Defendants Lydia McFadden and Christiana Care Health Services as a result of the negligence of the Defendants on May 23, 2002.

PARTIES

1. Plaintiff, Kimbra Criswell, (hereinafter "Plaintiff") is an adult individual, residing at 2109 East Whalla Lane, Phoenix, Arizona 85024.

2. Defendant Lydia Adair McFadden (hereinafter "McFadden"), is an adult individual residing at 33 Cobblestone Court, in Northeast, Maryland.

3. Defendant Christiana Care Health Services, Inc. (hereinafter "Christiana"), is a corporation of the State of Delaware, with its principal place of business in New Castle County Delaware. Its registered agent for service of process is The Medical Center of Delaware, Inc., 501 West 14th Street, Wilmington, DE 19899.

4. At all times relevant and material hereto, the Plaintiff was employed by

Aureus Medical (hereinafter "Aureus"), working as an x-ray technician at Defendant Christiana.

5. At all times relevant and material hereto, Defendant McFadden was an employee, servant, workman, representative and/ or agent of Defendant Christiana, and was acting within the scope and course of said employment and/ or agency.

6. At all times material and relevant hereto, Defendant Christiana, was acting through their agents, servants, employees, workmen, and/ or representatives, said agents, servants, employees, workmen and representatives acting within the course and scope of their employment and/ or agency.

JURISDICTION AND VENUE

7. This court has jurisdiction of this case pursuant to 28 U.S.C. §1332, because this action is between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

8. Venue is proper pursuant to 28 U.S.C. § 1391(a) because the accident giving rise to the claim occurred in this jurisdiction.

THE FACTS

9. On or about May 23, 2002, at or around 9:30 am, the Plaintiff was present in the hallway of the operating room, on the second floor of Defendant Christiana when, suddenly and without warning, Defendant McFadden, negligently, recklessly, carelessly and improperly caused certain portable X-ray machine (hereinafter "Machine") to be moved forward, causing said machine to come into contact with the Plaintiff's body, thereby causing the Plaintiff to suffer sever and grievous injuries.

10. At all times relevant and material hereto, said Machine was owned, operated, maintained, leased and/ or controlled by Defendant Christiana.

11. This accident resulted solely from the negligence and carelessness of the Defendants, and was due in no manner whatsoever to any act or failure to act on the part of the Plaintiff.

12. As a direct and proximate result of this accident, the Plaintiff, suffered injuries to her left leg and foot, which may be or are serious and permanent, including, but not limited to left Achilles tendon rupture, Achilles tendonitis, Achilles tendonosis, and abnormal gate, requiring hospitalization.

13. As a direct, proximate and foreseeable result of said injuries, the Plaintiff has developed various medical conditions, including but not limited to osteopenia and permanent reflex sympathetic dystrophy (hereinafter "RSD"), which resulted in softening and demineralization of bones in the Plaintiff's left foot, thereby making said bones easily breakable.

14. In November of 2002, the Plaintiff made a step from a normal-size curb which resulted in injuries, which may be or are serious and permanent, including, but not limited to a fracture in the fourth metatarsal of the Plaintiffs' left foot, requiring hospitalization.

15. Said fracture was a direct, proximate and foreseeable result of said RSD condition and RSD-related softening and demineralization of bones and said fracture could not have occurred but for said RSD condition and RSD-related softening and demineralization of bones.

16. Said achilles tendon rupture, RSD and fracture did not result from any intervening or superceding causes and was due in no manner whatsoever to any act or failure to act on the part of the Plaintiff.

17. At all times relevant and material hereto, the Plaintiff timely obtained

adequate medical assistance and fully complied with all prescribed medical treatments.

18. As a direct and proximate result of the aforesaid accident and injuries, the Plaintiff has incurred expenses for the treatment of her injuries, has been disabled and not able to perform her usual functions, and has been caused great pain and suffering, to her great loss and damage.

19. As a direct and proximate result of the aforesaid accident and injuries, the Plaintiff has been obligated to receive and undergo medical attention and care for her injuries, and to incur various expenses for said care.

20. As a direct and proximate result of the aforesaid accident and injuries, the Plaintiff has suffered injuries, which may be in full or part a cosmetic disfigurement which is or may be permanent, irreparable, or severe.

21. As a direct and proximate result of the aforesaid accident and injuries, the Plaintiff has or may suffer severe loss and impairment of her earning capacity and power.

22. As a direct and proximate result of the aforesaid accident and injuries, the Plaintiff has been unable to attend to her daily chores, duties and occupations.

23. As a direct and proximate result of the aforesaid accident and injuries, the Plaintiff has incurred other financial expenses or losses, which she may otherwise be entitled to recover.

24. As a direct and proximate result of the aforesaid accident and injuries, the Plaintiff has suffered severe physical pain, aches, mental anguish, humiliation and inconveniences, and loss of life's pleasures and she may continue to suffer the same for an indefinite period of time in the future.

COUNT I
PLAINTIFF v. DEFENDANT MCFADDEN

25. The Plaintiff incorporates by reference thereto, paragraphs 1-24, inclusive, as though same were set forth herein at length.

26. The negligence, carelessness and recklessness of Defendant McFadden, consisted of the following acts and omissions:

- (a) failure to properly move said Machine;
- (b) moving said Machine without proper lookout;
- (c) violation and/ or failure to comply with the appropriate procedures for moving of said Machine;
- (d) causing said Machine to come into contact with the Plaintiff's body;
- (e) failure to properly operate, control and move said Machine;
- (f) failure to act reasonably under the circumstances;
- (g) failure to act with the reasonable prudence and care of a reasonable person in the same or like circumstances;
- (h) operating, controlling and moving said Machine without due regard to the presence and safety of the Plaintiff,
- (g) violation and/ or failing to comply with laws, guidelines, codes, statutes, laws, regulations, standards, policies and ordinances that are applicable and in effect; and
- (h) being otherwise negligent and careless as may be determined through discovery and/ or trial of this case.

27. As a direct and proximate result of the negligence and carelessness of Defendant McFadden, the Plaintiff sustained serious and permanent injuries and other damages as described more fully above.

COUNT II
PLAINTIFF v. DEFENDANT CHRISTIANA

28. The Plaintiff incorporates by reference thereto, paragraphs 1-27, inclusive, as though same were set forth herein at length.

29. The negligence, carelessness and recklessness of Defendant Christiana, consisted of the following acts and omissions:

- (a) negligently entrusting said Machine to Defendant, McFadden;
- (b) failing to properly and adequately hire, supervise, train, instruct, and/ or regulate its agents, servants and employees, in particular, Defendant, McFadden;
- (c) permitting an inexperienced and incompetent person to operate said Machine;
- (d) failing to act with due care and regard for the position and safety of others, in particular, the Plaintiff;
- (e) failing to control the acts and conduct of Defendant McFadden, its employee and/ or agent, and instead, acquiescing in said Defendant's negligence and carelessness;
- (f) failing to provide a safe work environment;
- (g) failing to properly and adequately maintain said Machine; and
- (h) such other negligence acts and/or failures to act as may be discovered during the course of discovery in this action;

30. As a direct and proximate result of the negligence and carelessness of Defendant Christiana, the Plaintiff sustained serious and permanent injuries and other damages as described more fully above.

COUNT III
PLAINTIFF v. DEFENDANT CHRISTIANA

31. The Plaintiff incorporates by reference thereto, paragraphs 1-30, inclusive, as though same were set forth herein at length.

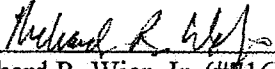
32. The negligence and/or carelessness of Defendant Christiana's, agents, servants, workmen, drivers, employees, representatives, managers and/ or independent contractors, in particular, Defendant McFadden, which occurred within the course and scope of employment and/or agency with Defendant Christiana, is imputed to said Defendant and said Defendant is liable for same.

33. As a direct and proximate result of the negligence and carelessness of Defendant Christiana, the Plaintiff sustained serious and permanent injuries and other damages as described more fully above.

WHEREFORE, Plaintiff prays that judgment be entered in her favor and that she be awarded damages against Defendants, jointly and severally, including but not limited to compensatory damages, punitive damages, lost wages, medical bills for past and future treatment, attorneys' fees, costs and expenses, and such other and further relief as may be just and appropriate under the circumstances.

Respectfully submitted,

RICHARD R. WIER, JR., P.A.


Richard R. Wier, Jr. (#116)
Daniel W. Scialpi (#4146)
1220 Market St., Suite 600
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(302)888-3222
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Westlaw

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Page 1

Not Reported in A.2d, 2003 WL 21203291
(Cite as: Not Reported in A.2d)

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Not Reported in A.2d, 2003 WL 21203291
Only the Westlaw citation is currently available.
UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

Superior Court of Delaware.
Louis A. O'DONNELL and Carol D. O'Donnell
v.
NIXON UNIFORM SERVICE, INC.
No. Civ.A. 01C-10-291RRC.

Submitted: Feb. 24, 2003.
Decided May 20, 2003.

Upon Defendant's Motion to Dismiss. Granted.

Bruce C. Herron , Sawyer, Akin & Herron, P.A.,
Wilmington, Delaware, for Plaintiffs.
William L. Doerler , White and Williams LLP,
Wilmington, Delaware, for Defendant.Dear Counsel:

COOCH, J.

*1 Currently before the Court is defendant Nixon Uniform Service, Inc.'s ("Nixon Uniform") motion to dismiss the complaint. It is the second such motion that Nixon Uniform has filed during the progression of this and an earlier, related case. The issue is whether the current complaint, filed after the prior dismissal of Nixon Uniform "with prejudice" following Plaintiffs' failure to have responded to a motion to dismiss in the earlier case, falls within the purview of Delaware's "savings" statute (title 10, section 8118 of the Delaware Code) ; FN1 if it does not, then Plaintiffs' second complaint is void as to Nixon Uniform because the statute of limitations otherwise applies. The Court finds that the statute does not pertain to the Plaintiffs' second complaint because Plaintiffs failed to respond to a Court-ordered request for a response to a motion to dismiss, which led to the November 14, 2000 Order and Letter Opinion dismissing Nixon Uniform from that earlier, related action "with prejudice," thus constituting a final judgment "

on the merits." Thus Plaintiffs' current action does not fall within the terms of the statute, and Plaintiffs' current against Nixon Uniform is therefore barred. Accordingly, Nixon Uniform's Motion to Dismiss is GRANTED.

FN1. See Del.Code Ann. tit. 10, § 8118 (1999) (providing that "[i]f in any action duly commenced within the [applicable statute of limitations] ... the writ is abated, or the action otherwise avoided or defeated ... for any matter of form[,] ... a new action may be commenced, for the same cause of action, at any time within one year....").

FACTUAL AND PROCEDURAL HISTORY

Plaintiffs were involved in an automobile accident with Thomas A. Lilly ("Lilly") on March 11, 1998. On March 7, 2000, Plaintiffs filed a complaint against Lilly and Nixon Uniform, alleging that Lilly was negligent and was otherwise acting within the course and scope of his employment with Nixon Uniform when the accident occurred. Lilly was a resident of Pennsylvania, and Plaintiffs attempted to serve him via Delaware's nonresident motorist "long-arm" statute (title 10, section 3112 of the Delaware Code). Because Plaintiffs failed to comply with the technical requirements of that statute, on August 24, 2000, this Court granted Lilly's motion to dismiss the complaint for failure to have perfected service upon him. FN2

FN2. *O'Donnell v. Lilly and Nixon Unif. Serv., Inc.*, Del.Super., C.A. No. 00C-03-072, Cooch, J. (Aug. 24, 2000) (ORDER) (dismissing plaintiffs' claims because they failed to mail a second copy of the summons and complaint to the nonresident motorist following the return of the first copy marked as "unclaimed").

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Page 2

Not Reported in A.2d, 2003 WL 21203291
(Cite as: Not Reported in A.2d)

Although Nixon Uniform had been properly served, it thereafter sought dismissal of the complaint as well. It argued that Plaintiffs could not maintain an independent cause of action against it once Lilly was dismissed as a party to the case, because the only claim lodged against it was for vicarious liability under principles of *respondeat superior*. The proposed order attached to its motion indicated that Nixon Uniform sought dismissal "with prejudice."

After receiving Nixon Uniform's motion, the Court sent a letter to Plaintiffs' counsel requiring a response by a date certain. When no opposition to Nixon Uniform's motion was filed by that date, counsel for Nixon Uniform wrote to the Court requesting that the motion be granted as unopposed; Plaintiffs' counsel was copied on the letter. Counsel for Nixon Uniform also filed a "Responsive Motion to Dismiss," FN3 in which counsel set forth the fact that Plaintiffs had failed to respond to the earlier-filed motion. Again attached to that motion was the proposed order that included the words dismissed "with prejudice."

FN3. Dkt. # 13.

*2 The Court granted Nixon Uniform's motion, "with prejudice," by short letter opinion and order on November 14, 2000. FN4 Plaintiffs did not seek reargument of, and did not appeal, the Court's August 24, 2000 decision dismissing the complaint against Lilly or of the Court's November 14, 2000 decision dismissing the complaint against Nixon Uniform.

FN4. The Court sent a letter to counsel indicating that "[i]n light of Plaintiffs' failure to have filed a timely response to [d]efendant [] [Nixon Uniform's] Motion to Dismiss, the Court deems ... [the] motion as unopposed." Letter from the Court to Counsel of 11/14/00. The Court simultaneously entered an order dismissing Nixon Uniform's from the action "with prejudice." *O'Donnell v. Lilly and Nixon Unif. Serv., Inc.*, Del.Super., C.A. No.

00C-03-072, Cooch, J. (Nov. 14, 2000) (ORDER).

On October 31, 2001, Plaintiffs, then represented by other counsel, FN5 filed a second complaint against Lilly and Nixon Uniform. Plaintiffs' asserted that the Delaware "savings" statute, which generally provides for an additional one-year time period within which to re-file a lawsuit under certain circumstances, applied to that filing. Again the basis for suit was the March 11, 1998 automobile accident, and again the only claim against Nixon Uniform was for vicarious liability under principles of *respondeat superior*.

FN5. Plaintiffs' previous attorney, H. James Childerston, had by then been suspended from the practice of law and various new attorneys had undertaken representation of Childerston's clients through a receivership process.

Lilly thereafter filed a motion to dismiss, arguing that: 1) Plaintiffs had again failed to perfect service upon him under Delaware's nonresident motorist "long-arm" statute; FN6 and 2) the second complaint had otherwise been filed outside of one year of the Court's August 24, 2000 Order. By letter opinion dated October 25, 2002, the Court granted Lilly's motion to dismiss on the ground that Plaintiff had failed to perfect service upon Lilly within the year following the August 24, 2000 dismissal of that part of the original action. FN7 In that letter opinion, the Court "expresse[d] no opinion on the viability of Plaintiffs' remaining claim against Nixon Uniform...." FN8

FN6. Plaintiffs did not mail a second copy of the summons and complaint to the nonresident motorist following the return of the first copy marked as "unclaimed." See Del.Code Ann. tit. 10, § 3112(e) (1999)

FN7. *O'Donnell v. Lilly and Nixon Unif. Serv., Inc.*, C.A. No. 01C-10-291 RRC, 2002 WL 31409621 (Del.Super.Oct. 25,

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A102

Not Reported in A.2d

Page 3

Not Reported in A.2d, 2003 WL 21203291
(Cite as: Not Reported in A.2d)

2002).

FN8. *Id.* at *3 n. 24.

Nixon Uniform then filed the present Motion to Dismiss.

CONTENTIONS OF THE PARTIES

Nixon Uniform argues that the second complaint must be dismissed on various grounds, some of which are interrelated. Nixon Uniform preliminarily contends that “[b]ecause the first cause of action against Nixon Uniform was not dismissed based upon insufficient service ... or any other matter of form [as is otherwise required by the “savings” statute], the Plaintiffs cannot invoke the savings statute to preserve their claim ... [i.e., the ‘second’ complaint is barred as against Nixon Uniform].” FN9 Next, citing *Greco v. University of Delaware*, FN10 Nixon Uniform argues “the Plaintiffs have failed to state a cause of action against ... [it] because Nixon Uniform ... cannot be held liable unless Lilly is [also] liable.” FN11 Lastly, Nixon Uniform argues that the bar to Plaintiffs’ suit resulting from Plaintiffs’ failure to perfect service upon Lilly within the year provided by the “savings” statute accrues to its benefit as well. FN12

FN9. Def.’s Mot. at 2. In its Reply in support of its motion, Nixon Uniform characterizes the Court’s November 14, 2000 Order as having been “on the merits.” Def.’s Reply at 1.

FN10. 619 A.2d 900 (Del.1993) (holding that a “viable cause of action” against an employee is generally a condition precedent to imputing vicarious liability to an employer).

FN11. Def.’s Mot. at 2.

FN12. *Id.* at 3.

In response, Plaintiffs argue the “savings” statute applies to their second complaint because this Court

“has found the savings statute applicable where, as here, the original suit is dismissed due to the inaction of [a] plaintiff’s attorney.” FN13 As against Nixon Uniform, they contend that “the original action was not finally ‘determined’ until the Court’s November 14, 2000 dismissal for matters of form ...” FN14 so that “[t]he filing of the new [c]omplaint on October 31, 2001 falls within the permissible time frame [to maintain an action against Nixon Uniform based upon the March 11, 1998 accident].” FN15 With regard to Nixon Uniform’s *Greco* argument, Plaintiffs contend that Nixon Uniform can be held liable even Lilly’s absence, and rely upon *Latina v. Kledaras et al.* FN16 for that proposition. Lastly, Plaintiffs assert that because the Court’s October 25, 2002 Letter Opinion was specifically limited to defendant Lilly, “[t]he defect in service resulting in dismissal of the claim against Lilly does not require dismissal of the claim against the employer[,] Nixon Uniform.” FN17

FN13. Pls.’ Resp. ¶ 4.

FN14. *Id.* ¶ 3. (In contrast to Nixon Uniform, Plaintiffs assert that the November 14, 2000 Order “did not address the merits....” Pls.’ Resp. ¶ 1.)

FN15. *Id.*

FN16. Del.Super., C.A. No. 00C-01-230, Toliver, J. (Dec. 14, 2001) (ORDER) (holding that if a plaintiff can demonstrate the negligence of hospital employees in the context of a medical negligence case involving a claim against a hospital for vicarious liability, the hospital may be found liable regardless of whether the employees were named as defendants). (Nixon Uniform argues, however, that the *Latina* Court “misconstrue[d] *Greco* because th[at][C]ourt never decided the issue of ... the statute of limitations.” Def.’s Reply at 3).

FN17. Pls.’ Resp. ¶ 6.

Not Reported in A.2d

Page 4

Not Reported in A.2d, 2003 WL 21203291
(Cite as: Not Reported in A.2d)

DISCUSSION

*3 A “savings” statute is generally defined as a statute or rule that has been enacted “to permit the bringing of a new action within a specified time after [a] former action has failed, even if the statute of limitations has expired.” FN18 But “[a] great variety of language is used in these ... statutes ... [making] it difficult to make helpful general comments.” FN19 Nevertheless, “[t]he usual situation to which the saving statute is applied ... is one in which the plaintiff has been nonsuited, FN20 or the like, because of lack of jurisdiction, wrong venue, or failure to prosecute.” FN21 Under Delaware law, however, dismissals for failure to prosecute are generally considered to be “with prejudice,” *i.e.*, “on the merits.” FN22 Thus, a second suit filed after a dismissal for failure to prosecute would appear to fall outside the ambit of the “savings” statute, so a second suit following a dismissal for failure to prosecute would be barred. FN23

FN18. 51 Am.Jur.2d *Limitation of Actions* § 273 (2000).

FN19. 4 Am.Jur. *Trials Statutes of Limitation* § 56 (1966).

FN20. A nonsuit is a “procedural step that terminates the pending litigation but ... leaves the issues ... undecided[]”; it is “equivalent to a dismissal[]” 24 Am.Jur.2d *Dismissal, Discontinuance, and Nonsuit* § 4 (1998) (citations omitted).

FN21. 4 Am.Jur. *Trials Statutes of Limitation* § 56 (1966).

FN22. *See Wilmington Trust Co. v. Connors*, C.A. No. 96C-03-023 WSL, 1997 WL 127957, at *3 (Del.Super.Feb. 14, 1997) (refusing to “attribute ... any intent to ... Rule 41(e) dismissals [as] be[ing] without prejudice unless otherwise specified”).

FN23. *See* notes 25 and 27, *infra*, and

accompanying text.

Nonetheless, Delaware's statute provides, in pertinent part, that

[i]f in any action duly commenced within the time limited therefor [by the applicable statute of limitations] ... the writ is abated, or the action otherwise avoided or defeated ... for any matter of form[,] ... a new action may be commenced, for the same cause of action, at any time within one year after the abatement or other determination of the original action.... FN24

FN24. Del.Code Ann. tit. 10, § 8118 (1999).

The statute is “designed to allow a plaintiff ... one year to file a second cause of action following a final judgment adverse to his position if such judgment *was not upon the merits* of the cause of action [and the terms of the statute are otherwise satisfied].” FN25 For purposes of the present motion, the statute in effect has two alternative prongs: a prong that applies whenever “the writ has abated,” and a prong that applies whenever the action is “avoided or defeated ... for any matter of form.” Plaintiffs potentially need only satisfy one.

FN25. *Gosnell v. Whetsel*, 198 A.2d 924, 926 (Del.1964) (emphasis added).

At first blush, Plaintiffs' action might be thought to fall within the first prong of the statute, *i.e.*, “abatement” of the writ. At common law, an abatement was “an overthrow of a suit, the equivalent of a dismissal, resulting from the fact that the defendant pleads some matter that defeats the action, either for the time being or permanently.” FN26 Here, Nixon Uniform had pleaded in the earlier, related action “some matter”, *i.e.*, Plaintiffs' inability to maintain suit against it following dismissal of defendant Lilly, and that “matter” defeated Plaintiffs' original action because Nixon Uniform's motion containing that language was granted “with prejudice.” Thus the question is whether the granting of the motion “with prejudice” was or was not “upon the merits.”